

## **Chapter 13.32 TREE REMOVAL CONTROLS**

### **13.32.010 Purpose of provisions.**

It is the purpose of this chapter to promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems.

(Prior code § 8930; Ord. 26595.)

### **13.32.020 Definitions.**

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter:

A. "Certified arborist" means an individual who has demonstrated knowledge and competency of arboriculture through the obtainment of an arborist certification from the International Society of Arboriculture, or its successor organization if that organization no longer exists, or who is a member of the American Society of Consulting Arborists, or its successor organization if that organization no longer exists.

B. "Dead tree" means a tree that is no longer alive, has been removed beyond repair, or is in an advanced state of decline (where an insufficient amount of live tissue, green leaves, limbs or branches exists to sustain life) and has been determined to be in such a state by a certified arborist during a non-dormant or other natural stage of the tree that would minimize the likelihood that the tree would be mistakenly identified as being in such a dead state.

C. "Director" means the director of planning, building and code enforcement of the City of San José or such other person designated by the city manager to administer and enforce the provisions of this chapter.

D. "Dripline" means the area around the base of a tree directly under the canopy cover of the tree and extending out as far as the canopy.

E. "Live tree" means any tree that is not a dead tree.

F. "Nuisance tree" means any tree on a lot that is used for a single-family residence that meets all of the following criteria:

1. The tree is not a heritage tree as defined in Section 13.32.140; and

2. The tree is either a eucalyptus tree, or a palm tree, or a pine tree, or a tree-of-heaven.

~~F. G.~~ "Ordinance tree" means a tree defined in this section hereinbelow and whose removal or topping is covered by and subject to the provisions of this chapter.

~~G. H.~~ "Remove" means eliminate, take away, uproot or destroy. For purposes of this chapter, "remove" also means taking any action that reasonably and foreseeably will lead to the death of a tree or to permanent significant damage to the health or structural integrity of a tree. Such actions can include, without limitation and by way of example, excessive pruning, cutting, girding, poisoning, or watering of a tree; the unauthorized relocation or transportation of a tree; excessive excavation, alteration, or grading of the soil within the dripline of a tree, or excessively bruising, tearing or breaking the roots, bark, trunk or branches of a tree.

~~H. I.~~ "Topping" means cutting the branches of an ordinance tree in a manner that destroys the existing symmetrical appearance or natural shape of the tree and involves the removal of main lateral branches and leaving the trunk of the tree or major branches of the tree with a stub appearance.

~~I. J.~~ "Tree" means any live or dead woody perennial plant characterized by having a main stem or trunk which measures fifty-six inches or more in circumference at a height of twenty-four inches above natural grade slope. For purposes of this chapter, a multi-trunk tree shall be considered a single tree and measurement of that tree shall include the sum of the circumference of the trunks of that tree at a height of twenty-four inches above natural grade slope. "Tree" shall include the plural of that term.

(Prior code § 8931; Ords. 21363, 26595.)

### **13.32.030 Removal of live tree.**

It shall be unlawful for any person to remove, or cause to be removed, any live tree, as defined in Section 13.32.020, from any private parcel of land in the city unless one of the following conditions exists:

- A. Removal of the tree is required pursuant to the provisions of Chapter 13.28; or
- B. A development permit that allows the removal of the tree has been issued and accepted by the permit applicant pursuant to the provisions of Title 20 of this Municipal Code; or
- C. An amendment to a development permit that allows the removal of the tree has been issued and accepted pursuant to the provisions of Title 20 of this Municipal Code; or
- D. A tree removal permit that allows the removal of that tree has been issued and accepted pursuant to the provisions of this chapter.

(Prior code § 8932; Ords. 21363, 26595.)

#### **13.32.040 Removal of dead tree.**

It shall be unlawful for any person to remove, or cause to be removed, any dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless the following conditions exist:

A. A report prepared and executed by a certified arborist has been submitted to the director upon the director's request documenting that the tree qualifies as a dead tree pursuant to the definition set forth in Section 13.32.020 above; and

B. Only after the condition set forth in subsection A. has been satisfied, either one of the following additional conditions exists:

1. A development permit adjustment that allows the removal of the dead tree has been issued and accepted by the permit applicant pursuant to the provisions of Title 20 of this Municipal Code; or

2. A tree removal permit that allows the removal of the dead tree has been issued and accepted by the permit applicant pursuant to the provisions of this chapter.

(Ord. 26595.)

#### **13.32.041 Removal of nuisance tree.**

It shall be unlawful for any person to remove, or cause to be removed, any nuisance tree, as defined in Section 13.32.020, from any private parcel of land in the city unless the following conditions exist:

A. Information has been submitted to the director upon the director's request documenting that the tree qualifies as a nuisance tree pursuant to the definition set forth in Section 13.32.200 above; and

B. Only after the condition set forth in subsection A. has been satisfied, either one of the following additional conditions exists:

1. A development permit adjustment that allows the removal of the nuisance tree has been issued and accepted by the permit applicant pursuant to the provisions of Title 20 of this Municipal Code; or

2. A tree removal permit that allows the removal of the nuisance tree has been issued and accepted by the permit applicant pursuant to the provisions of this chapter.

#### **13.32.045 Presentation of permit on request.**

A. It shall be unlawful for any person to remove or cause to be removed a live tree or dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless the permit or a copy of the permit is maintained on the site where the tree to be removed is located.

B. It shall be unlawful for any person to remove or cause to be removed a live tree or dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless the permit or a copy of the permit can immediately be presented upon request to the director of planning, building, and code enforcement, police officers, and their designee.

C. It shall be unlawful for any person to engage in any tree removal activity or allow any activity to remove the tree that is the subject of the permit to occur unless and until: (1) the permit or a copy of the permit is located on the site where the subject tree is located, and (2) the permit or a copy of the permit is readily available for presentation upon request as described in this section.

(Ord. 27978.)

### **13.32.047 Posting of permit.**

A. It shall be unlawful for any person to remove or cause to be removed a live tree or dead tree, as defined in Section 13.32.020, from any private parcel of land in the city unless a copy of the permit is posted on the parcel on which the subject tree is located prior to commencement of and during any actions involving removal of the tree as follows:

1. The copy of the permit shall be a minimum size of eight and one-half (8.5) by eleven (11.0) inches, posted at each public street frontage within two (2) feet from the public right-of-way, and posted in such a manner that the permit is readable from the public right-of-way; or

2. If the parcel that is the subject of the permit does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.

B. It shall be unlawful for any person to engage in any tree removal activity or allow any activity to remove the tree that is the subject of the permit to occur unless and until the permit is posted as described in this section.

(Ord. 27978.)

### **13.32.050 Certified arborist report.**

In addition to the requirement for a certified arborist report pursuant to the provisions of Section 13.32.040, the director may require the applicant to submit a report prepared and executed by a certified arborist whenever the removal of any tree is proposed and the director determines that he or she needs additional information documenting that any or all of the criteria for a tree removal permit clearly exist.

(Ord. 26595.)

### **13.32.060 Penalty.**

Any person who unlawfully removes or has unlawfully removed a live tree or dead tree, or causes or has caused the unlawful removal of such a tree, shall be subject to any appropriate enforcement action by the city, which action may include without limitation the issuance of an administrative citation and the imposition of an administrative fine in the amount set forth in a schedule of administrative fines set forth by resolution of the city council.

(Ord. 26595.)

### **13.32.070 Permit application.**

A. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any live tree from any private parcel of land in the city, as set forth in Section 13.32.030, shall file a written application on a form provided by the director, setting forth therein, among other things, the number, type, size and location of each tree and the reason for removal of each tree.

B. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any dead tree from any private parcel of land in the city, as set forth in Section 13.32.040, shall file a written application on a form provided by the director, setting forth therein, among other things, the number, type, size and location of each tree, the reason for removal of each tree, and the certified arborist's report assessing the condition of tree and the time frame in which the assessment occurred.

(Prior code § 8934; Ords. 21363, 26595.)

### **13.32.080 Development permit combined.**

The request for a tree removal permit pursuant to the provisions of this chapter may be included as part of an application for a development permit under the provisions of Title 20 of this Municipal Code. Where the request for a tree removal permit is included as a part of a development permit application under Title 20, the development permit may serve as the tree removal permit and be processed under the application, noticing, hearing and appeal provisions applicable to the development permit application, and no separate tree removal permit application and tree removal permit shall be required, so long as all of the substantive provisions and permit processing requirements of this chapter are met as a part of processing that development permit application.

(Ord. 26595.)

### **13.32.090 Review of permit application.**

A. The director shall conduct an investigation on each application for a tree removal permit for trees accepted for filing that are not nuisance trees pursuant to the definition set forth in Section 13.32.200.

B. Each such investigation shall include an opportunity for the following persons to appear before and be heard by the director on the condition of the tree and whether it should be removed: (1) the applicant, and (2) the owners and occupants of property contiguous to the parcel upon which the tree or trees proposed to be removed is or are located or directly across a public street which abuts such parcel.

C. The director shall not act upon any tree removal permit application for trees that are not nuisance trees pursuant to the definition set forth in Section 13.32.200 until and unless the director has first given the applicant, owners and occupants an opportunity to be heard thereon.

D. Notice of the time and place at which the applicant, owners and occupants may appear before the director and be heard on the application for trees that are not nuisance trees pursuant to the definition set forth in Section 13.32.200 shall be given by mailing the same to the applicant, postage prepaid at the address shown for such purposes on the application, to such owners postage prepaid at their last known address as the same appears upon the last equalized assessment rolls of the County of Santa Clara, and to such occupants postage prepaid at the address of the parcel on which the said tree or trees to be removed is or are located and at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located. All such notices shall be mailed at least five days before the date on which the applicant, owners and occupants will be heard.

E. The form of the notice shall be as prescribed by the director.

(Ord. 26595.)

### **13.32.100 Permit findings.**

A. Neither the director nor the planning commission on appeal shall issue a permit for the removal of any tree on any private parcel of land in the city unless the director or the commission on appeal makes at least one of the following findings:

1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or

2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or

3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal; or

4. That the tree is a nuisance tree pursuant to the definition set forth in Section 13.32.200.

B. In connection with an application to remove a dead tree, the director or the planning commission on appeal shall consider whether the subject tree was in any way

injured, removed or caused to be injured or removed by the applicant, in addition to the findings required to be set forth pursuant to the provisions hereinabove.

(Prior code § 8935; Ords. 21363, 26595.)

### **13.32.110 Action on a permit.**

A. In taking action on a tree removal permit application, the director or the planning commission on appeal may deny the application or issue a tree removal permit for one or more trees and concurrently deny removal for one or more trees.

B. The director or the planning commission on appeal may make any permit that they issue subject to such terms, provisions and conditions as they may deem reasonably necessary to secure the general purposes of this chapter.

C. The director or the planning commission on appeal shall impose as a condition on the issuance of any permit for the removal of any tree the requirement that a suitable replacement tree or trees as determined by the director or the planning commission on appeal be or cause to be provided, installed and maintained by the permittee at no cost to the city.

D. The replacement tree requirement set forth in this section shall be roughly proportionate to the tree replacement needed to alleviate and address the burdens and other impacts created by allowing the removal of the tree or trees under the permit, except that the director or the planning commission on appeal may increase by a reasonable amount the number of replacement trees to be provided, installed and maintained by the permittee where it is specifically found based upon evidence in the record that the permittee injured or removed or caused the injury or removal of a dead tree that is a subject of the permit without first obtaining a tree removal permit.

(Ord. 26595.)

### **13.32.120 Appeal procedures.**

A. Except for actions of the director on nuisance trees, any action of the director may be appealed to the planning commission by the applicant or by any of the property owners or occupants of the parcels of land adjacent to or across the street from the property upon which the tree or trees proposed for removal are located. The person making the appeal shall do so by filing a written notice of appeal within ten days after notice of such action is mailed to the applicant at the address shown for such purpose on his application and to such owners mentioned in Section 13.32.090 at their last known address as the same appears upon the last equalized assessment rolls of the county and to such occupants mentioned in Section 13.32.090 at the address of the parcel on which the tree or trees to be removed is or are located and at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located.

B. Such notice of appeal shall be filed with the director on a form furnished by the director. The information and data required to be set forth in the form shall be as



prescribed by the director. The director may refuse to accept any such notice of appeal unless the notice is signed and all data is set forth and shown as required by the form.

C. When such notice of appeal has been accepted and filed by the director, within the time provided, the director shall, subject to the applicable rules of the planning commission, set a date of hearing thereon by the planning commission and notify the commission of such setting. Such date of hearing shall be not less than fifteen days nor more than thirty days after the notice of appeal was accepted and filed.

D. The director shall give notice of the hearing to the appellant or appellants, and the applicant, owners and occupants by mailing same at least five days before the date set for hearing, to the appellant or appellants at the address shown for such purpose on his or their notice of appeal, and to the applicant, owners and occupants at the address to which the director's action was mailed and said director shall also file with the planning commission at its hearing on appeal the application, notice of appeal, the action appealed from, and all other things filed with the director in connection with the application.

E. The planning commission shall hear all matters on appeal de novo and shall take action within a reasonable time after conclusion of its hearing.

(Prior code § 8936; Ords. 12363, 26595.)

### **13.32.130 Safeguarding trees during construction.**

For the purpose of safeguarding trees during construction, all of the following conditions shall apply to all such trees except for trees for which a tree removal permit has been issued or which are required to be removed pursuant to Chapter 13.28:

A. Prior to the issuance of any approval or permit for the construction of any improvement on the building site, all trees on the site shall be inventoried by the owner or contractor as to size, species and location on the lot and the inventory shall be submitted on a topographical map to the director; and

B. Damage to any tree during construction shall be immediately reported by a person causing the damage, the responsible contractor, or the owner to the director, and the contractor and/or owner shall treat the tree for damage in the manner specified by the city arborist; and

C. No construction equipment, vehicles or materials shall be stored, parked or standing within the tree dripline; and

D. Drains shall be installed according to city specifications so as to avoid harm to trees due to excess watering; and

E. Wires, signs and other similar items shall not be attached to trees; and

F. Cutting and filling around the base of trees shall be done only after consultation with the city arborist and then only to the extent authorized by the city arborist; and



G. No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or wastewater shall be dumped on the ground or into any grate between the dripline and the base of the tree or uphill from any tree where certain substances might reach the roots through a leaching process; and

H. Barricades shall be constructed around the trunks of trees as directed by the director so as to prevent injury to trees making them susceptible to disease causing organisms; and

I. Wherever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots.

(Ords. 21362, 26595.)

### **13.32.140 Heritage trees.**

A. Any tree as the term "tree" is defined in Section 13.28.020 located on private property which, because of factors including but not limited to its history, girth, height, species or unique quality, has been found by the city council to have a special significance to the community shall be designated a heritage tree. Such trees shall be placed on a heritage tree list which shall be adopted by the city council by resolution, which resolution may be amended from time to time to add to or delete certain trees therefrom.

B. Any person who unlawfully vandalizes, grievously mutilates, removes or destroys such a heritage tree shall be subject to any appropriate enforcement action by the city, including without limitation the imposition of an administrative citation with the imposition of a civil penalty in the amount set forth by resolution of the city council for each such tree so vandalized, mutilated, removed or destroyed.

(Ords. 21362, 26595.)

### **13.32.150 Failure to give or receive notice.**

The failure to post, mail or deliver by personal service any notice required under this chapter or the failure of any person to receive such notice, shall not affect the validity of any proceedings or actions taken by the city or its employees, agents or contractors under this chapter.

(Ords. 21362, 26595.)

## Chapter 20.100 ADMINISTRATION AND PERMITS

### Part 2 COMMON PROCEDURES

#### 20.100.140 Concurrent review.

A. Whenever applications, for the same site have been filed for one or more development permits or approvals required by this title, such development permit or approvals may be reviewed and acted on in a unified process. Determinations of public convenience or necessity governed by Chapter 6.84 of Title 6 of the San José Municipal Code may be included in the unified process. Tree removal permits governed by Chapter 13.32 of Title 13 of the San José Municipal Code may be included in the unified process. Subdivision approvals governed by Title 19 of the San José Municipal Code may be included in the unified process.

B. The unified process shall use the procedures required for the highest level permit or approval. Permits and approvals are ranked as follows with the highest level permit or approval listed first: rezoning, conditional use permit; subdivisions; determination of public convenience or necessity; planned development permit; special use permit; site development permit; single-family house permit-director's decision; development exception; development variance; sidewalk café permit; tree removal permit-director's decision; single-family house permit-administrative decision; and tree removal permit-administrative decision.

C. The hearing body shall make the findings, if any, applicable to each permit or approval.

(Ords. 26248, 27077, 27440, 27626.)

#### 20.100.220 Appeal - Hearing body.

Decisions on permits or approvals pursuant to this chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body	Appeal Decision Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission
Site Development Permit - Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council

Single-Family House Permit	Director of Planning	
Administrative Decision	Director of Planning	No Appeal
Director's Hearing	Director of Planning	Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Conditional Use Permit - Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal
Conditional Use Permit involving off-premises sale of alcoholic beverages requiring a determination under Chapter 6.84 where findings required by Planning Commission under Section 6.84.030.B.1. through 4. cannot be made	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit	Director of Planning	City Council
Tree Removal Permit	Director of Planning	<del>Planning Commission</del>
<u>Administrative Decision</u>	<u>Director of Planning</u>	<u>No Appeal</u>
<u>Director's Hearing</u>	<u>Director of Planning</u>	<u>Planning Commission</u>
Zoning Code Verification Certificate	Director of Planning	No Appeal

(Ords. 26248, 26455, 27091, 27185, 28731, 28958, 29046.)

### **20.100.300 Recordation.**

A. Within 30 days of the permit or other approval becoming effective, in accordance with the provisions of Section 20.100.290, fulfillment of all conditions precedent to release pursuant to this chapter and the payment of fees, a certificate identifying the permit or other approval shall be recorded by the city. The permit or other approval and the rights and restrictions therein shall run with the land to the fullest extent allowed by law.

B. If any permit or other approval is revoked after a hearing on an order to show cause pursuant to this chapter, a certificate of revocation shall be recorded with the county recorder's office.

C. Provisions A and B shall not apply to the following permits:

1. Administrative Permits that do not include the installation of utility structures; or
2. Tree Removal Permits; or
3. Special Use Permits that only include demolition of existing buildings or structures; or
4. Planned Development Permits that only include demolition of existing buildings or structures.

#### **20.100.XXX Administrative procedures.**

For any application for a tree removal permit that is subject to the administrative approval procedures:

1. The director may, in the director's sole discretion, approve an administrative level tree removal permit.
  2. The decision is an administrative determination and requires no hearing or notice.
  3. The action of the director is final. If the application is denied, nothing in this section shall preclude the applicant from filing an application for a director approval pursuant to this part.
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